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International Covenant on Civil and Political Rights

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Human Rights Committee
Eighteenth session

Summary record of the 2170th meeting
Held at Headquarters, New York, on Wednesday, 17 March 2004, at 11 a.m.

Chairperson: Mr. Amor

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Fifth periodic report of Germany

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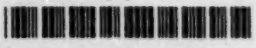
04-27355 (E)



The meeting was called to order at 11.05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Fifth periodic report of Germany
(CCPR/C/DEU/2002/5)

1. *At the invitation of the Chairperson, the delegation of Germany took places at the Committee table.*

2. **Mr. Pleuger** (Germany), introducing the fifth periodic report of Germany, said that the report covered the period from September 1993 to July 2002 and highlighted the new focus of the German Government on human rights issues, which cut across traditional policy lines. He emphasized that the protection of human rights was not a matter for Governments alone: a host of other actors, including the courts, non-governmental organizations and international organizations, could make significant contributions. In that connection, he welcomed the establishment of contacts between the United Nations Security Council and the High Commissioner for Human Rights and the governing bodies of various other human rights treaty-based organizations; such cooperation should be further developed, particularly in the area of counter-terrorism activities. He also welcomed the Secretary-General's intention to appoint a special adviser on the prevention of genocide.

3. The principle of the universal and indivisible nature of human rights guided Germany's actions in that sphere and the Government was working to ensure that that principle was respected throughout the world. Since becoming a party to the Covenant, Germany had viewed closed cooperation with the Committee as a priority and, in that respect, recognized that the task of giving practical effect to international human rights obligations was an ongoing process that required transparency and continuous assessment at both the national and the international levels.

4. **The Chairperson** invited the delegation to address the list of issues (CCPR/C/80/L/DEU).

5. **Mr. Stoltenberg** (Germany) said that, before proceeding to Germany's replies to the list of issues, he would like to outline a number of recent developments in the area of human rights policy. The Federal Government's activities in that sphere were guided by two principles: first, a credible human rights policy must begin with the protection of those rights at the domestic level. Only a State that was persistently concerned with human rights protection at home could legitimately call for the respect of those rights in other States. Secondly, only those States that were aware of human rights violations within their own borders would succeed in improving the situation.

6. In 1998, the Federal Parliament (*Bundestag*) had set up its own independent Committee on Human Rights and Humanitarian Aid, which was concerned not only with human rights in the context of foreign relations but also with the domestic situation. Furthermore, the Government had decided to restructure the biannual human rights report submitted by the Government to the *Bundestag*. A focal point of the sixth report, which could be accessed via the Internet pages of the Federal Ministry of Justice and the Ministry of Foreign Affairs, was the suppression, at the national level, of racism and xenophobia, and the next report, due in 2004, would contain a national action plan for the protection of human rights.

7. The German Human Rights Institute had been established in March 2001 and was presently focusing on publicizing its activities and mapping out its position in the public domain. One of its core responsibilities was the monitoring of the domestic human rights situation, in accordance with the Paris principles. The independence of the Institute was of primary importance, since only as a civil society institution could it effectively fulfil its mandate, hence the Government was confining itself to a supporting role. To that effect, representatives of the Federal Government had no voting rights on its governing bodies. The funding of the Institute, which amounted to 1.5 million euros per year, was covered under the Federal Budget and, crucially, non-governmental organizations, the Committee on Human Rights and the Federal Government had reached a consensus on the mandated tasks of the Institute and its organizational structure.

8. All three of those developments were intended to help raise awareness of the importance of protecting human rights at the domestic level and to contribute towards establishing a critical public with enlightened attitudes.

9. With regard to specific government officials working in the area of human rights, he said that the

position of Commissioner for Human Rights in the Ministry of Foreign Affairs had been upgraded, meaning that the incumbent now acted on behalf of the entire Federal Government. The Commissioner's duties included following developments in human rights at the global level, helping to shape bilateral and multilateral dialogue on human rights and making proposals for the formulation of the Federal Government's human rights policy.

10. He himself had been appointed Federal Government Commissioner for Human Rights Matters at the Federal Ministry of Justice in 2000, but the position had existed since 1971. An important aspect of his work was the protection of human rights in the United Nations context and, in that connection, he was responsible for monitoring compliance with the majority of the international legal instruments in that domain. He had been particularly supportive of Germany's recognition of the communications procedures under a number of those instruments and stressed that it was important for the Federal Government to set a good example in that area.

11. With reference to question 22 on the list of issues, concerning the dissemination of information on the submission of reports and their consideration by the Committee, particularly the concluding observations, he said that, for the first time, the Human Rights Forum, the umbrella organization that brought together all non-governmental organizations concerned with human rights, had been given the opportunity to submit its observations on the report prior to its adoption by the Federal Cabinet. The involvement of non-governmental organizations at such an early stage augured well for an early start to the national discussion on internal human rights problems. The fifth periodic report had also been adopted by the Federal Cabinet and brought to the attention of all Federal Ministries and, for the first time, discussed by the parliamentary Committee on Human Rights.

12. The concluding observations would be forwarded to the *Bundestag*, all Federal Ministries and the Länder and there were plans to publish them on the web sites of the Federal Ministry of Justice and the Ministry of Foreign Affairs. After the adoption of the observations, the Federal Ministry of Justice would invite the Federal Ministries concerned to participate in a follow-up discussion. In addition, the German Human Rights Institute had decided to organize a follow-up conference, involving representatives of the Federal Ministries, non-governmental organizations and the Länder, in order to discuss issues arising from the consideration of the report and the concluding observations. Similar conferences would be held following the consideration of subsequent reports.

13. Lastly, he wished to inform the Committee about the most recent developments in the so-called Daschner case. Mr. Daschner had been Deputy Chief of the Frankfurt Police and had instructed a policeman to threaten an accused person with torture in order to ascertain the whereabouts of a missing boy whose life had been in danger. Criminal proceedings had been initiated against him and, two weeks previously, the Office of the Public Prosecutor had announced that Mr. Daschner and the other policeman concerned had been indicted on the grounds of coercion and incitement to coercion. Mr. Daschner had subsequently been removed from office and transferred to another position.

Implementation of the Covenant and right to an effective remedy (article 2) of the Covenant

14. With reference to question 1 on the list of issues, he said that, over the reporting period, the Federal Constitutional Court and the other highest Federal courts had referred to the Covenant in a series of judgements and decisions. He would provide the members with a written overview of those decisions at the end of his statement; the written replies contained further details.

15. Turning to question 2, on the relationship between Germany's federal structure and the Covenant, he said that the Covenant was binding on all agencies of the German Federation and the Länder. It therefore enjoyed the same validity as other human rights instruments ratified by Germany, and any Land law violating the human rights covenants was invalid. Furthermore, whenever a legal norm was open to more than one interpretation, it was the interpretation that met the demands of public international law that prevailed. Human rights laws thus enjoyed a higher status than those of the Federation or the Länder. In accordance with the Basic Law, all violations of the law, whether by the Federation or by a Land, could be brought before an independent court. Whenever a Land issued legal norms that conflicted with Federal law (the Covenant, for example), the Federation could ask the Federal Constitutional Court to declare them invalid.

16. However, the Federation had not yet been obliged to take such measures, because the Länder themselves were committed to the protection of human rights. With respect to article 26 of the Covenant, on protection against discrimination, the Länder had over recent years taken a range of measures to educate the population, discourage discrimination and combat right-wing extremism and anti-Semitism. Several Länder had also been making strenuous efforts to employ foreign nationals as policemen, and others — including Bavaria and Rhineland-Palatinate — were taking steps to improve the situation of the elderly. In Thuringia, cases of remand detention lasting longer than three months had been cut almost by half over the past 10 years. Lastly, the constitutions of certain Länder, such as Bremen, made specific reference to human rights, thus subjecting the Land in question to a corresponding obligation.

17. With regard to question 3, concerning the application of the Covenant to armed forces deployed internationally, he said that it could not be excluded that the Covenant might be applicable where States parties were acting on foreign territory. However, that was a complex legal issue, which had not yet been clarified. Moreover, when exercising the powers granted to them under operations abroad, Germany's armed and police forces ensured compliance with all humanitarian and human rights standards arising in customary international law. In times of armed conflict, international human rights protection should also be seen in connection with international humanitarian law. Protection from crimes against humanity must also be guaranteed. Human rights training was part of the leadership philosophy of Germany's armed forces. All those participating in foreign operations of the armed forces attended training before deployment abroad. German and international criminal law and international humanitarian law applicable to operations abroad were also included in the training. Police officers to be deployed in international peacekeeping operations received human rights education as part of their preparation. Those deployed in Afghanistan had received one week of preparatory training, although the curriculum did not contain a specific module on human rights. However, respect for basic and human rights constituted a standard element of every German police training syllabus, and human rights formed an integral part of the training given by German police officers at Kabul Police Academy. Lastly, there had been no indications of any human rights violations by German soldiers or armed forces during foreign operations. Senior personnel were supported, during foreign deployment, by experienced legal advisers on questions relating to criminal and disciplinary law.

18. Turning to question 4, concerning anti-terrorism measures, he said that the security situation had undergone dramatic changes, and that international terrorism had become a serious global threat. As a result, it had been necessary to develop further legal instruments. Following the terrorist attacks of 11 September 2001, Germany had adopted its Counter-Terrorism Act (*Terrorismusbekämpfungsgesetz*), which had come into force on 1 January 2002. The Act included changes to several specialized legal provisions in Federal police law, intelligence services law and law on foreigners. As a result, the authorities concerned had been able to improve data exchange, visa procedures and border patrols. A new offence had been added to the Criminal Code in order to facilitate prosecution for the formation and support of criminal and terrorist actions abroad. Following a change in the Law governing Private Associations it was now possible to ban extremist religious associations, under certain strict conditions. The Islamic association *Kalifatsstaat* had been banned on 12 December 2001 because it had incited its members to fight democracy, those who held other beliefs and the Republic of Turkey. The ban had since been upheld by the Federal Constitutional Court, which had also considered the conflict between the right to ban associations and the principle of religious freedom. The banning of an association was justifiable only if it was absolutely essential according to the proportionality principle — generally the case if the association actively opposed the core principles of the German Constitution — and could only be an act of last resort. Lastly, at the European level, Germany had created a national law for implementing the European Union Council Framework Decision of 13 June on combating terrorism. Germany believed that the laws enacted following the attacks of 11 September 2001 had established an appropriate balance between new security demands and individual freedoms. The provisions of the Covenant had not been violated in consequence, and the security authorities had made responsible and careful use of their new powers.

Equality of men and women (article 3 of the Covenant)

19. With regard to question 5, on Germany's 2001 Federal Equality Act, he said that the aim of the Act, which had come into force on 5 December 2001, was to make it easier for men and women to lead a family life and be gainfully employed. Initial data suggested that the Act had been having a distinctly positive impact. The number of women serving as Director General had risen from 8.9 per cent in 2001 to 12.0 per cent in 2002, and the corresponding figure for female divisional heads had risen from 13.4 per cent to 15.9 per cent. However, Germany was aware that legislation alone did not bring about a change in conditions. Those concerned had to be comprehensively informed about the new provisions and helped with their implementation. In that regard, a brochure had been produced, for those involved in the practical application of the law, especially the Equality Commissioners and personnel managers. There had been numerous inquiries about training. For assistance with questions of fundamental importance, Equality Commissioners could turn to the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. In addition, the Federal Academy of Public Administration offered a broad range of further training on the Federal Equality Act. The achievement of equality for women and men in all spheres of life remained the declared objective of the Federal Government. In the light of article 3, paragraph 2, of the Basic Law, stipulating the obligation to promote real enforcement of the equality of men and women and to work to eliminate existing disadvantages, the Federal Government would be undertaking further legislative steps in that area. The Federal Armed Forces would be given modern statutory provisions on equality, and equality would be vigorously promoted in the private sector, as part of efforts to implement the European Union's Equal Treatment Directive. Lastly, the legislative projects of all Federal Ministries and new European Union proposals for Directives were being monitored in terms of equality policy, with a view to gender mainstreaming.

Right to life (article 6 of the Covenant)

20. **Mr. Stoltenberg** (Germany), replying to question 6, said that the Federal Government took reports of deaths in police custody extremely seriously. Incidents must be thoroughly investigated without delay, and the officials responsible must be held accountable. Preventive measures were especially important, including human rights education and behavioural training for police officers.

21. Turning to the death of Stephan Neisius, he referred the Committee to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2003/3/Add.1), and said he would recount the developments following the submission by the Federal Government of its replies to the report.

22. Following preliminary investigations, the Director of Public Prosecutions in Cologne had pressed charges against six police officers accused of beating Mr. Neisius so brutally that he had died from his injuries two weeks later. Mr. Neisius had been in police custody at the time of the beating. The officers had subsequently been found guilty of bodily injury resulting in death, and given suspended prison sentences of one year to one year and four months. In sentencing the officers, the court had taken into account their automatic dismissal from service and its serious consequences for their future. Also, the trial had revealed that the victim might not have died had he been given proper medical treatment without delay. The authorities in Cologne had since charged the doctors in the case with negligent homicide; preliminary investigations were being conducted. The officers had lodged an appeal against the judgement, which was still pending; disciplinary measures had been suspended until a final verdict was reached. Meanwhile, the officers had been suspended from service and their salaries had been reduced by up to 25 per cent.

23. In a separate incident, two police officers had taken a known alcoholic in a state of helpless intoxication and released him in an uninhabited area on the outskirts of the Hanseatic City of Straslund, on a very cold night. Their purpose had been to teach the man a lesson. The following night the victim had died of alcohol intoxication and hypothermia. The officers had subsequently been charged, tried and sentenced to three years and three months in prison, and stripped of their status as public officials.

24. Not all cases had resulted in successful prosecution. In another incident, a police officer in Nordhausen had been violently attacked by a suspect. Seeking to subdue him by a gunshot aimed at his leg, the officer had instead shot the suspect in the lower back, killing him. The officer had been charged with

negligent homicide, and acquitted. The court had found that his life had been in danger and there had been no time to fire a warning shot. An appeal was pending.

25. In another incident involving the Nordhausen police, a hotel guest who had been incorrectly identified as the "Murderer of Remagen" had tried to prevent four armed police officers entering his room. In the ensuing altercation, the guest had been shot dead. The public prosecutor had sought to charge the two officers who had used their firearms with negligent homicide. The proceedings had been terminated twice under a provision of the Penal Code that prohibited trial of cases in which there was little likelihood of a conviction.

26. Finally, in two separate incidents, one in Düsseldorf and one in Hamburg, involving suspects who had been arrested on drugs charges and had died while in police custody, the cases against the officers had been dismissed. In the first case, it had been impossible to ascertain the cause of death; in the second, there had been insufficient evidence against the officers.

27. Turning to question 7 concerning injuries and death during deportations, he said that the Federal Government took the matter very seriously, and prosecuted any such cases. It was possible, however, that some complaints of ill-treatment were filed to prevent or postpone deportations. Some deportees put up vigorous resistance, and some Federal Border Guards had sustained very serious injuries. He would address only the two cases cited in the question, but would provide further information to the Committee, on request.

28. Mokhtar Bahira, an Algerian national, and his wife and children had applied for asylum. The claim had been rejected and deportation ordered. When the police had arrived at their home to begin the deportation operation, Mr. Bahira had taken a knife and approached one of the officers in a threatening manner. Then, holding the knife towards his own throat, he had climbed onto the sill of an open window. When he had refused to drop the knife, one of the officers had fired two shots, to prevent Mr. Bahira committing suicide. The second shot had caused him serious injury. The officer had been charged with negligent bodily injury, but the case had not been prosecuted on grounds that the injury had been unavoidable under the circumstances. Mr. Bahira's injuries had been deemed sufficient grounds for revocation of the deportation order.

29. Aamir Ageeb, a Sudanese national, had died on the plane while being deported to Khartoum, of injuries sustained when three officers of the Federal Border Guard had tried to force him into his seat during take-off. The officers had been charged with negligent homicide, the case had gone to trial and the judgement was still pending.

30. Mr. Ageeb's death had caused careful examination of the entire deportation mechanism, resulting in the enactment of regulations on procedures to be observed by Federal Border Guards during deportation, including rules to be followed when force was used, and the implementation of updated and extended training programmes that emphasized practical skills required in difficult situations.

Rights to be free from torture or cruel, inhuman or degrading treatment or punishment and to be treated, as a prisoner, with dignity (articles 7 and 10 of the Covenant)

31. **Mr. Stoltenberg** (Germany) said, in reply to question 8, that there were no official statistics relating to allegations of ill-treatment by the police. The Government was aware of fewer than 100 cases, many of which had been documented by non-governmental organizations or the media. Criminal investigations had been opened in almost all the cases. Of the cases that had been concluded, approximately two thirds had either not been prosecuted or had resulted in the acquittal of the police officer charged. Convictions had resulted in fines or terms of imprisonment, and, in some cases, disciplinary proceedings and dismissal from the police force.

32. The primary aim of the Federal Government was to prevent incidents of ill-treatment by police officers, and the Federation and the Länder had taken measures to that end. Constitutional rights and human rights were central aspects of initial and higher training of police officers. Criminal proceedings against officers were subsequently analysed with a view to revising service law and reducing the risk that such incidents would reoccur.

33. With reference to question 9, despite publicly expressed opinions by members of the police and the judiciary that torture should be permissible in extreme circumstances, there was an absolute ban on torture in

Germany. In addition to Germany's obligations under international law as party to the relevant international and European conventions, the German constitution, or Basic Law, affirmed in article 1 the inviolability of human dignity and human rights and provided in article 104 that persons in custody could not be subjected to mental or physical mistreatment. Section 136(a) of the Code of Criminal Procedure prohibited the use of certain practices, including those that would commonly be called torture, in examining accused persons. The Criminal Code provided severe penalties for torture; under section 343, for example, extortion of testimony in criminal proceedings was subject to up to 10 years' imprisonment.

34. Not least because of the impression left by the atrocities committed by the Nazi regime, the authors of the Basic Law had established in article 79, paragraph 3, that any amendments that would affect the basic human rights principles laid down in article 1 would be inadmissible. That meant that the guarantee of respect for human dignity and inalienable human rights was secured even against a majority sufficient to amend the Basic Law.

35. With respect to question 10 on protection against forcible return to a country where there existed a specific danger of torture or killings by non-State actors, section 53, paragraph 6, of the Aliens Act provided protection against deportation to a country in which the individual concerned faced a specific danger to life, limb or freedom. That would include a threat from non-State actors. In the case of general threats to an entire population or group, the Land (state) authorities could issue a general ruling that deportations were to be temporarily discontinued. Even when there was no individual threat, in some cases the Federal Administrative Court could make an exception if an extremely serious general threat of death or serious injury existed (including the likelihood of death due to starvation) and the highest Land authorities had failed to make use of their authority to authorize a general halt to deportation.

36. Although the Federal Administrative Court decisions cited in the question held that article 3 of the European Convention on Human Rights related only to protection against State actors, in its judgement of 15 April 1997 the Court had expressly drawn attention to the fact that the protection offered in section 53, paragraph 6, of the Aliens Act applied to threats from both State and non-State actors. If the latter provision was correctly interpreted, there was no loophole in protection. Moreover, section 60 of the Immigration Act envisaged threats posed by non-State actors as a reason for recognition of refugee status.

37. With regard to question 11 on asylum, it was true that pursuant to article 16a, paragraph 2, of the Basic Law and section 26a of the Asylum Procedure Act no person could invoke the right to asylum in the Federal Republic of Germany if they entered it from a member State of the European Union or from another State in which application of the Geneva Convention relating to the Status of Refugees and the European Convention on Human Rights was assured. The legislature determined which non-European Union States were to be classified as "safe third countries", and its designation could not be refuted. Aliens could therefore be turned away at the border or deported back to the safe third country without examination of their case. However, the Federal Constitutional Court in a decision of 14 May 1996 had ruled that an alien entering from a safe third country might remain in Germany pending examination of his or her case if there were obstacles to deportation: if the alien was faced with the death penalty in the third country; if the alien faced a serious, real danger of being the victim of a crime in the third country; if there had been sudden changes in the conditions on the basis of which the country had been classified as safe; if the third country had begun persecuting asylum-seekers or subjecting them to inhuman treatment or if it had became known that the third country would refuse to provide a specific alien with protection by examining his or her application for asylum. The Federal Office for the Recognition of Foreign Refugees was responsible for making such decisions, which could be appealed to the competent administrative court, but the examination was generally limited to determining whether the alien had entered from a third safe country.

38. In any case, the Dublin II Regulation for determining the European Union member State responsible for examining an asylum application took precedence over national regulations. And from 1 May 2004 when Poland and the Czech Republic were to accede to the European Union, the regulations governing safe third countries would no longer have practical significance.

39. **The Chairperson** invited the Committee to put further questions to the delegation concerning its replies to the list of issues.

40. **Mr. Kälin** said that he had been pleased by the remark made in the introduction to the effect that a credible human rights policy must begin at home. The State party was to be commended for its comprehensive report and in particular for the regular reference to the Committee's concluding observations on the fourth periodic report. In areas where the report had been lacking in detail on the problems encountered, the replies to the list of issues had filled the gap.

41. There had been advances in several areas, notably in the establishment of the National Human Rights Institute and the parliamentary Committe on Human Rights. He was pleased to note that, despite problems, progress had been made in combating right-wing, anti-Semitic and xenophobic violence. Important measures had been taken to achieve gender equality in public service, and legislation protecting the rights of children had been improved. Constitutional court decisions had strengthened recognition of the rights of religious communities and protection of privacy.

42. With regard to the problems associated with federalism in regard to the implementation of human rights conventions, he had been pleased to hear that remedies were available to individuals against human rights violations by the Länder and that the federal Government could intervene to ensure implementation of federal laws by the Länder. However, experience had shown that the main problem was not where the Länder committed specific violations of human rights but where they refrained from taking active measures to ensure the application of human rights norms or questioned the right of the federal Government to dictate policy in certain areas. He wondered how the Government addressed such situations.

43. With regard to the extraterritorial application of the Covenant, he was troubled by the statement that Germany was not in a position to affirm the applicability of the Covenant in Afghanistan, but that its armed forces there could apply only those human rights standards that arose from international customary law. Much of the content of customary law was undefined apart from certain core values. Moreover, Germany was not a party to the conflict in Afghanistan and was not an occupying force; hence, international customary law might not apply. He wondered whether Germany applied the content of article 9 of the Covenant, for example, when its forces carried out arrests and detentions in Afghanistan. On the same issue, the Committee had heard complaints that German troops in Quebec executing low-level training flights over indigenous lands were affecting the health and traditional culture of the indigenous people, and he wondered whether Germany would agree that the Covenant applied in such a case.

44. He wished to thank the delegation for the detailed information provided c :cerning the deaths that had occurred during the de, ortation of foreigners. With regard to the :se of firearms by police, he was pleased to note that the number of persons killed or injured in the use of firearms had declined in recent years, but would like to have an update of the statistics provided in paragraph 56 of the report. According to the report, use of firearms by the police was permissible only in extreme circumstances, but in some of the cases reported in reply to question 6, the conditions for using firearms had not been met. He would like to know in more detail what steps were being taken to ensure that police did not use firearms in inappropriate circumstances.

The meeting rose at 1 p.m.

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04-27343 (E)

The meeting was called order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Fifth periodic report of Germany (continued) (CCPR/C/DEU/2002/5, CCPR/C/80/L/DEU; HRI/CORE/1/Add.75/Rev.1)

1. *At the invitation of the Chairperson, the delegation of Germany took places at the Committee table.*

List of issues (continued) (CCPR/C/80/L/DEU)

2. **The Chairperson** invited the members of the Committee to continue putting questions to the delegation in connection with articles 2, 3, 6, 7 and 10 of the Covenant (questions 1 through 10 on the list of issues).

3. **Mr. Shearer**, referring to the Counter-Terrorism Act (question 4 of the list of issues) and the various other enactments amended pursuant to its adoption, asked whether such amendments had all been made in a single enactment, including those relating to the law governing private associations. He would appreciate receiving a copy of the Act itself and of the decision of the Federal Constitutional Court of 2 October 2002 mandating certain legislative changes to avoid conflict with religious freedom. He would like more information on the role of the various organs referred in the delegation's oral introduction to its report (CCPR/C/DEU/2002/5) in monitoring the content and applications of all counter-terrorism legislation. He noted that the new National Human Rights Institute (report, paras. 9 and 10) was not a government body, and wished to know more about its composition and how its independence was guaranteed. Noting the Committee's concern regarding derogations from human rights during a state of emergency, expressed in its general comment No. 29, he asked whether the principles of necessity and proportionality explicitly espoused by the Government had been applied in its drafting of all anti-terrorism laws.

4. The text of the delegation's reply to question 17, which would be addressed later in the meeting, seemed to imply that exceptions might sometimes be made to the requirement that a court order must be issued to justify intrusive investigative measures. He also wondered in what ways the Federal Constitutional Court decision of 3 March 2004 had restricted the application of audio surveillance of residential premises.

5. **Mr. Wieruszewski**, commending the German attitude of openness to the Committee and to non-governmental bodies and not simply to the European system, welcomed the establishment of the Institute for Human Rights as an important new source of non-governmental information, and looked forward to learning about its work in the next periodic report. The figures given indicating an improvement in the position of women in the country (question 5) were encouraging, but left room for improvement. He noted that the composition of the delegation itself reflected the progress made. He would like to know more about the impact of the government policy to combat domestic violence, sensitize the judiciary and protect the victims; and about any lingering east-west discrepancies in that area.

6. With regard to the expulsion of refugees (question 10), he asked whether the unavailability of medical treatment would, under the Foreigners Act, constitute an obstacle to deportation, whether the newly established anti-terrorism measures were preventing refugees from being given asylum on a mere suspicion and whether such decisions could be challenged.

7. He wondered whether the presumption of the safety of a designated third country to which asylum-seekers were to be deported (question 11) could be challenged, and whether it had ever been determined that a non-specific threat of a general nature existing in such a country constituted an obstacle to deportation. He observed that Poland had given asylum to a person expelled by Germany to his country of origin, where in fact he had subsequently been tortured.

8. **Sir Nigel Rodley** said that the decline in the number of allegations of police brutality in Germany (question 8), as reported by Amnesty International in January 2004, was a good sign. Recalling that the Committee had in the past urged the Government to establish an independent mechanism to investigate allegations of torture and ill-treatment, he asked whether the independent parliamentary Commission on Human Rights and the National Human Rights Institute had any fact-finding powers and the power to act on individual cases. He noted the inability of the Government to provide any solid data on such

incidents: it would be highly desirable for the authorities to keep such statistics. It was unclear how the figures given by the delegation for known cases of ill-treatment meshed with the much higher figures later given for cases of bodily harm in the text of the reply to question 13. Half the known cases of ill-treatment were said to have involved foreigners. The other half, consisted of those nationals perceived as not being ethnic Germans encountering any particular problems, was the case in many countries, although virtually all cases were prosecuted, the results indicated that the courts seemed reluctant to convict police officers. It would be interesting to know what percentage of those who had been penalized had received fines and what percentage had been given a term of imprisonment, or had otherwise been disciplined or dismissed from the police force, and whether there was any provision for reparations for victims.

9. With respect to torture (question 9), which the Government had banned absolutely, he asked the delegation to comment on the countervailing legal argument in Germany that, where there was a conflict of legal values, necessity could be invoked as a defence against a charge of torture.

10. **Mr. Solari Yrigoyen** noted with concern that several articles of the 1949 Constitution — for example, articles 8, 9, 11 and 12 — guaranteed the rights only of Germans, and wondered about the status of the human rights of foreigners in Germany. Whereas article 12 of the Covenant was non-restrictive as to liberty of movement, it was unclear if legal residents, for example, would need special permission to move within or leave the country.

11. **Ms. Chanet** applauded the Government's firm position with regard to torture. On the other hand, she asked whether it envisaged maintaining its many reservations to the Covenant and the Optional Protocol. In particular, she would appreciate an explanation of its reservation to article 15, paragraph 1, which concerned a non-derogable right. Also, since the report indicated (paras. 371-372) that Germany was ratifying the Twelfth Optional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, containing a general prohibition of discrimination, there seemed no longer to be any justification for maintaining its reservation to the Optional Protocol to the Covenant with specific regard to violations of article 26 of the Covenant.

12. **The Chairperson** invited the delegation to respond.

The meeting was suspended at 3.45 p.m. and resumed at 3.55 p.m.

13. **Mr. Stoltenberg** (Germany) said that he would send the statutes of the German Institute for Human Rights to the Committee by e-mail and noted that a recent declaration by the German Parliament listing the institute's tasks did not include following up any individual human rights violations. While the institute did look into individual cases in order to ascertain if there were structural faults, it did not act as an ombudsman. On the question of the independence of the institute and the criteria for selecting its governing board, he indicated that there were 16 voting members from civil society, two from the Parliament, three representatives of the German Human Rights Forum, two from science and two from the media. The board was strictly an advisory body and the institute operated under private, not public, law. The institute received a subsidy of 1.5 million euros but that did not impose any obligation. One of the institute's first actions was to produce a booklet on terrorism and human rights, and which was available on its web site. The booklet enumerated 10 basic interpretations, including on the right to work, on the State's position on economic, social and cultural rights and on the European protection of human rights.

14. With regard to the composition of the delegation, he wanted to make clear that no women had been available to represent the specific areas and he was not happy with that situation. On the subject of torture and the newspaper interview given by Mr. Döring, he emphasized that Mr. Döring was a recognized scientist but had never dealt with international law. There was no exception in international law to the absolute ban on torture and Mr. Döring did not address that issue. With respect to the regulations that applied to foreigners, he said that there were human rights provisions under the Universal Declaration of Human Rights and under the Covenant that went beyond German Basic Law. Thus, German fundamental rights, applied only to German nationals, while basic rights or human rights applied for all citizens. However, the Federal Constitutional Court had ruled that foreign nationals had more or less the same rights as German nationals, including the right of assembly.

15. Commenting on the late submission of the English version of the delegation's statements in response to the list of issues, he wished to make it clear that the delegation had not intended to give that English version to members. In fact, that version was meant for the interpreters.

16. He expected the reservation to article 15 of the Covenant to be abolished, as had already been the case with the reservation to article 7, paragraph 2. With regard to the Twelfth Protocol to the European Convention on Human Rights, he noted that few States had ratified it and that it was not clear when it would enter into force. There were reservations on the part of the Federal Government, which wanted to wait for the ruling of the European Court of Human Rights on that optional protocol. Certain States had reservations about the distinction made between the rights of nationals and those of non-nationals with regard to social aid, though the ruling of the court might end that differentiation thus creating an enormous burden for the federal budget. The Government would maintain its reservation to article 26 and wait for further developments affecting the optional protocol.

17. With regard to the relationship between the Federation and the Länder, he noted that the report and the concluding observations had been sent to the Länder on the recommendations of the Committee. There would be a meeting with all ministries on a federal level and the Länder would be invited to the follow-up to the conference of the Institute for Human Rights. On the basis of the conference outcome, it would be decided how to cooperate with the Länder.

18. **Mr. Mengel** (Germany) said that the freedom of movement guaranteed in the Basic Law was not applicable to foreigners. However, under a ruling by the Federal Constitutional Court if their freedom of movement was restricted within federal territory, they could evade that restriction by invoking either article 2, paragraph 1, of the Basic Law or article 12 of the Covenant. Foreign nationals from the member countries of the European Union had freedom of movement in principle, while special regulations had been agreed for the accession countries, including a transition period of seven years. Other foreign nationals who resided in Germany legally enjoyed freedom of movement. Asylum-seekers could remain in Germany legally while their request was being processed, though they could not travel beyond a defined territorial area. Foreign nationals who were not legal residents were tolerated but had to be available to the authorities at all times.

19. Commenting on the consequences of the Law on the Combat of Terrorism, he said that the Government's starting-point had been Security Council resolution 1373 (2001), which called upon States to redouble their efforts to fight terrorism in the framework of international law, including the Geneva Convention relating to the Status of Refugees. In Germany, the Geneva Convention relating to the Status of Refugees had not been fully implemented but that omission had been rectified. The regulation in article 1, paragraph f of the Geneva Convention relating to the Status of Refugees was incorporated in German asylum law and paragraph 2, sentence 2 of the Foreigners Act. There had to be reason to believe that the foreigner was trying to breach the peace and the suspicion of terrorism had to be justified. The justification included membership in a terrorist organization, prosecution on that charge, or eviction on grounds of suspected terrorism.

20. Moreover, foreign nationals were not deported if medical treatment was not available in the country to which they were being deported. The federal Government and the Foreign Office tried to verify if medical treatment was feasible in the asylum-seeker's country of origin. Furthermore, he noted that it was possible to refute the argument that a third country was considered safe in specific circumstances, although the procedure had never been applied. In addition to the regulations on safe third countries, there were also regulations on safe countries of origin. With regard to Mr. Wieruszewski's comment that Poland had deported asylum-seekers to their States of origin, where they had been prosecuted, he said that he was not aware of that situation. He added that there was a ban on chain deportation, where an individual was deported to a country, which then deported her/him to a third country in which he/she was under threat of police prosecution.

21. **Mr. Wieruszewski** said that his comment had been misunderstood. It was not the case that Germany had sent a person to Poland, and Poland had then sent that person back to his country of origin. In fact, Germany had deported a refugee to his country of origin, where he had then been tortured. The refugee had then gone to Poland and was granted asylum there. The German authorities had been notified of the transfer.

22. **Mr. Stoltenberg** (Germany), speaking on the subject of acoustic surveillance, noted that the Federal Constitutional Court had found that the specific legal provisions authorizing such surveillance were unconstitutional and that the list of crimes where such surveillance was permitted was too comprehensive. Only severe crimes warranted such interference and there was a need for protective measures, such as the establishment of a time limit. Overheard personal conversations were not reliable evidence and such recordings should be deleted in compliance with the decision of the Federal Constitutional Court.

23. **Mr. Kiel** (Germany) said that some articles of the Law on the Combat of Terrorism had required changes in 20 other laws. The Associations Act was not part of the Law on the Combat of Terrorism, it had been adopted previously in separate legislative action. The aim of the law was to prohibit, within the scope of the Associations Act, organizations which posed as religious groups in order to mask their terrorist activities. However, the prohibition of religious organizations was only justifiable if the organization took active measures in violation of basic rights, including human rights.

24. In response to Sir Nigel Rodley's question, the delegation had already commented on the report of Amnesty International in their State report. There were no central statistics regarding abusive or unjust treatment by the police. The various offices of the 16 Länder had details of disciplinary action taken against officers which might also apply to minor offences committed outside official duties. A person who had committed an offence outside his official capacity could be sanctioned under disciplinary rules, as well as under criminal law. The data for the Länder could only be provided after a lengthy process and when the delegation queried the 16 Länder regarding their Amnesty International reports, it found that 50 per cent of the victims were foreign nationals and the other 50 per cent were German nationals. However, there were no figures indicating how many of those German nationals were of foreign origin because those statistics would touch on a very sensitive issue. The figures for the use of weapons by police officers which had resulted in death or injury, supplementing the statistics for 2000 provided in the report, were five deaths and 26 injuries in 2001, and six deaths and 28 injuries in 2002. The figures for 2003 were not yet available.

25. **Mr. Rothen** (Germany), head of the Task Force for Human Rights in the Federal Foreign Office, told Mr. Kälin that the applicability of the Covenant to armed or police forces deployed internationally, including in Afghanistan, had become an issue in Germany fairly recently and was still under consideration. His Government was fully aware of the need to forge a clear position on the matter and would certainly take the Committee's views into account in doing so.

26. **Mr. Simon** (Germany), representing the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, replying to Mr. Wieruszewski said, that full equality between men and women had not yet been achieved in Germany. The Domestic Violence Prevention Act, a piece of civil legislation, adopted a radical new approach to the problem. While, formerly, victims of domestic violence had had to flee to shelters or friends' homes, perpetrators were now barred from entry to the family home until protective measures were fully in place. The Act was supplemented by the legislation of the various Länder. Criminal police statistics showed an increase in the number of incidents of domestic violence investigated since the adoption of the Act, and in the number of women who dared to come forward and seek help. Nonetheless, there were still 40,000 women in shelters, demonstrating the great need for protection, care and counselling.

27. The tendency for women to be the first to be dismissed from industries whose business was declining was not peculiar to the former Länder of the German Democratic Republic, it was a nationwide problem. His Ministry was in close contact with industry and trade associations and was attempting to caution them against the drawbacks of dismissing women first, particularly educated women. A very high percentage of women civil servants in the former German Democratic Republic had been incorporated into the Federal public service after reunification. The average income of women from the former German Democratic Republic after reunification was 95 per cent that of men in 2001, while the average income of their western counterparts was 75 per cent that of men.

28. **The Chairperson** invited the delegation to address questions 12 to 22 on the list of issues (CCPR/C/80/L/DEU).

Right to be free from torture or cruel, inhuman or degrading treatment or punishment and to be treated, as a prisoner, with dignity (articles 7 and 10 of the Covenant) (continued)

29. **Mr. Stoltenberg** (Germany), referring to question 12 on the list of issues, said that the Government was taking steps to remedy the problems in providing care to elderly persons (CCPR/C/DEV/2002/5, paras. 113 to 115). They focused on better homes for the elderly, medical service inspections, health insurance, long-term care inspections and reporting (the next report would focus on practical experiences since the amendment of the Homes Act) and amendments to ordinances with a view to improving the building standards for new homes for the elderly. In October, a Long-term Care Round Table had been organized by the competent federal ministries as a forum for the exchange of best practices, to formulate recommendations and elaborate a charter of rights of elderly persons. Although there were no statistics broken down by offences, inspectors and a number of Länder had referred cases to the Federal Public Prosecutor's Office. The federal Government had also commissioned a study on crime and violence against elderly persons.

30. Question 13 on the list of issues was closely related to question 8. Unfortunately, any data that might have been available on ill-treatment of detainees by police officers, prison wardens and persons in similar positions were incorporated in overall crime statistics. The only figure he could provide was that, between 1993 and 2002, about 25 persons had been convicted yearly for bodily injury, including corporal punishment by teachers. Although ill-treatment of detainees was the exception, improved training programmes were in place to reduce the frequency of such incidents. Ill-treatment of detained persons was a criminal offence for which charges were brought by the Public Prosecutor before independent courts.

31. Referring to question 14 on the list of issues, he said that there were no federal statistics on the number and duration of cases of solitary confinement. In response to a request for figures sent to federal States where prison facilities were located, North Rhine-Westphalia, where approximately one quarter of all German inmates were imprisoned, reported 266 cases of solitary confinement in 2003 out of 48,525 prisoners, equivalent to 0.5 per cent of all prisoners. In no case had solitary confinement exceeded three months. In several other Federal States, solitary confinement had lasted more than three months a year in about 10 cases. Under the Prison Act, the supervisory body's consent had to be obtained in such cases. In Schleswig-Holstein, the supervisory body's permission had had to be obtained for a total of 16 cases between 1998 and 2004, or about two cases every year, in which solitary confinement had lasted from three to nine months. Overall, the figures clearly demonstrated the exceptional nature of solitary confinement in Germany.

32. Referring to question 15 on the list of issues, he said that Germany was combating trafficking in human beings, which it regarded as a serious breach of human rights, through special criminal provisions. In the Federal Criminal Police Office and in some criminal police offices in the Länder, special police units had been established to combat such trafficking. The Federal Criminal Police worked closely with the International Criminal Police Organization (Interpol), the European Police Office (Europol) and other bodies, particularly the Task Force on Organized Crime in the Baltic Sea Region and the Anti-terrorism Task Force of the Southeast European Cooperative Initiative. As far back as 1997, the Government had set up a national working party on trafficking in women. Germany was careful to provide full protection to victims and witnesses, who could shed light on offences and provide information that would ultimately help to convict offenders. To that end, the working party on trafficking in women had facilitated cooperation by the federal and State criminal prosecution authorities with non-governmental organizations (NGOs) and international agencies.

33. Germany was strongly committed to preventing trafficking in human beings before victims left their States of origin. The federal Government conducted education programmes at visa counters and provided support to the educational activities of NGOs in States of origin and transit States, and the German police cooperated with police forces of major States of origin by exchanging information, organizing special seminars in those States and offering internships. The statistics on criminal proceedings requested by the Committee were contained in the full text of the delegation's replies to the list of issues, and in annexes to be forwarded to the Committee.

34. Referring to question 16, he said that protection against the economic exploitation of prostitutes and

other contemporary forms of slavery was guaranteed under German penal law, and by the statutory definitions of the crimes of kidnapping and deprivation of liberty in the Penal Code. The legal status of prostitutes had improved significantly since 2002. The Prostitution Act was currently under review; the findings of the study would be submitted to the Bundestag in early 2005.

35. Turning to question 17 on the list of issues, he said that, earlier in the month, the provisions on audio surveillance of residential premises had been further restricted following a review by the Federal Constitutional Court. Those provisions would be updated as soon as possible. In practice, audio surveillance of residential premises was relatively limited. Apart from permitting the inclusion of certain social data in computer-assisted searches, the Counter-Terrorism Act described in the response to question 4 in no way broadened investigative powers under criminal procedural law. No such searches were conducted in connection with the incidents of 11 September 2001. The Act essentially expanded the investigative powers of the intelligence services, and, together with other relevant legal provisions, would be evaluated prior to its expiration in 2007. In its annual report for 2002, the Parliamentary Control Panel had found that the intelligence services had used their special powers judiciously, applying them in only 28 cases that year.

36. Referring to question 18 on the list of issues, he said that eligibility for public office was governed by article 33, paragraphs 2 and 3, of the Basic Law. The sole criteria for eligibility were suitability, qualifications and professional achievements, irrespective of faith and religious or political beliefs. Since one aspect of suitability was proof of loyalty to the Constitution, the authorities had to be satisfied that prospective civil servants would uphold the free democratic constitutional system within the meaning of the Basic Law. Loyalty to the Constitution was examined only where doubts arose as to a candidate's personal suitability. State authorities needed to ascertain the degree to which candidates who were members of the Scientology Organization were controlled or influenced by that organization, since its demand for total obedience and adherence to its aims could create a conflict with the obligations of a civil servant or other public service employee. Doubts as to a civil servant's loyalty to the Constitution did not constitute sufficient grounds for a dismissal; disciplinary proceedings would be instituted only where there was evidence of a breach of political loyalty, in violation of the public service laws.

37. Referring to question 19 on the list of issues, he said that his Government had taken a number of measures to put a stop to genital mutilation, particularly through publicity campaigns aimed primarily at physicians and counsellors. Under the strengthened provisions of the Sixth Reform Act of the 1998 Criminal Code, parents who removed their children from Germany to have a circumcision performed in another country were criminally liable for joint perpetration, together with the person who carried out the circumcision, and would be charged with incitement or aiding and abetting. Civil Code restrictions on parental custody rights and their right to determine their place of residence afforded additional protection. Germany also supported organizations and initiatives aimed at combating genital mutilation in the countries concerned.

38. Referring to question 20 on the list of issues, he said that it was not currently possible to foresee when his Government would ratify Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, paving the way for examination of its reservation under the Optional Protocol to article 26 of the Covenant. After the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban in 2001, the Federal Government had provided a detailed outline of its policy on xenophobia and anti-Semitism in a report on current and planned measures and activities against right-wing extremism, xenophobia and anti-Semitism and violence. The Government was tackling that extremely complex issue on several fronts including human rights policy, strengthening civil society, promotion of integration of foreigners and measures aimed at offenders and their environment.

39. Pursuant to the decisions taken at the Durban Conference, the Federal Government was drawing up its National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance with NGO participation through the Forum against Racism. Germany was cognizant of its historical responsibility to place strong emphasis on combating anti-Semitism. A Conference on Anti-Semitism within the context of the Organization for Security and Cooperation in Europe (OSCE), to be held in Berlin at

the end of April, would explore possibilities for joint action including the exchange of best practices and legislative and educational measures. Germany was fully aware that much remained to be done to eradicate anti-Semitism and xenophobia in its territory and was attempting to address those problems.

40. Question 22 on the list of issues had already been covered in his introductory statement to the Committee. The full details of the delegation's replies to the list of issues were contained in the text it had circulated.

41. **The Chairperson** invited Committee members to continue their questions and comments on the list of issues.

42. **Mr. Shearer**, referring to question 12 on the list of issues, asked whether the new National Human Rights Institute and the other organs established also monitored care of the elderly. He wondered whether young people providing community service in lieu of military service might have a role to play in that regard. While they might have less training or experience than professionals, their presence could be invigorating for elderly people.

43. **Mr. Wieruszewski**, referring to question 15 on the list of issues, asked whether the State party was contemplating granting residence permits to victims and witnesses of trafficking in human beings or providing a basic allowance for them under the social security scheme. With regard to question 20, he commended Germany on hosting a large number of refugees and displaced persons, including those originating in the former Yugoslavia, but feared that the repatriation of Roma to Serbia and Montenegro constituted discrimination based on ethnic origin. Following up Ms. Chanet's question on the implementation of the provisions of article 26 of the Covenant, he said that he found it extremely disturbing that a State party should seek to make a reservation to a substantive part of the Covenant through a reservation to the Optional Protocol concerning that article. That practice was contrary to the Vienna Convention on the Law of Treaties and other international standards. The reservation to the Optional Protocol meant that the Committee could not admit complaints under that article but it did not relieve Germany of its obligations under article 26 proper; to claim otherwise would be to renege on its treaty obligations.

44. **Mr. Glèlè-Ahanhanzo** echoed Mr. Wieruszewski's concern about the systematic repatriation of Roma and Sinti and also enquired about the status of third-generation Turks born in Germany. Lastly, he wondered why the Act on Registered Partnerships guaranteed "tolerance" of homosexuals and lesbians rather than affirming their rights in terms of human dignity.

45. **Ms. Wedgwood**, referring to question 18 on the list of issues, said that she had been taken aback by the statement that the Scientology Organization was "not a religious or philosophical community but an organization aimed at economic gains and acquisition of power" (CCPR/C/DEU/2002/5, para. 312), and that it enjoyed no status as a religion. She wished to know how many former civil servants from the German Democratic Republic had actually been rehired. Recalling the case of an OSCE diplomat who had been dismissed from the German Foreign Service, she found it troubling that persons whose constitutional loyalty was summarily called into question were not given individual hearings.

46. **Mr. Ando** also expressed concern about care for the elderly. In an ageing society, even under programmes entitling young people to fulfil their military obligations in civilian service in nursing homes for example, there would be a growing shortage of young people to take such positions. To an increasing degree, the elderly would be looking after other elderly people, which would inevitably affect the quality of care. He wondered whether the German authorities had developed any solutions to ensure quality care for the elderly.

47. **Mr. Kälin** asked whether the State party's reservation to article 26 implied that it did not accept full application of article 26 or simply that it excluded the Committee's competence to examine individual communications. He also would welcome comment on the case of the Inuit people of Canada because arguably the territorial scope of the application of article 1 of the Covenant as invoked by the Inuit people was different from that of article 2 because of the special character of article 1.

48. **Sir Nigel Rodley**, although he recognized the difficulty of obtaining comprehensive statistics, said that the federal Government should be doing something to ensure that adequate statistics were available on a continuing basis. He also noted an apparent

discrepancy between the statistics provided in the second paragraph of the reply to question 8 on investigations of ill-treatment on the part of the police and border guards, and the information provided in the reply to question 13 concerning convictions for inflicting bodily injury while in public office; he wondered whether the delegation could comment on or clarify that discrepancy. Finally, he requested information on any compensation provided to individuals whose complaint of torture or ill-treatment had been upheld.

49. **Mr. Stoltenberg** (Germany) said the National Human Rights Institute would be undertaking a study of the situation in nursing homes with a view to ensuring adequate quality care for the elderly. With regard to the reservation to article 26, he said that it only applied to the Committee's jurisdiction to hear individual complaints.

50. **Mr. Simon** (Germany) pointed out that young men who fulfilled their military obligations by working in nursing homes chose that placement; they recognized that it would be a challenging experience and were committed to doing a good job. In addition, they received between four and eight weeks' training before beginning work. His Government was fully aware of the problems posed by the ageing of society and had instituted family policies to try to ease the process. In order to ensure quality care, it was attempting to make employment in nursing homes more attractive by improving the image and increasing the pay of those who chose that occupation.

51. The basic problem in providing benefits for the victims of trafficking was one of residency status. Programmes to compensate the victims of trafficking could not be financed by applying the social security law; they had to come under the legislation relating to asylum-seekers. Discussions were under way to extend increased benefits to the victims of trafficking but adequate funding was also a problem and in some cases advocacy organizations were forced to advance funding to assist victims. New measures within the framework of the asylum law would be necessary as well as additional support for helping organizations.

52. His Government, in its effort to provide equal rights to homosexuals, had passed legislation establishing registered same-sex partnerships. The federal Government recognized the need to amend fiscal regulations to take into account the rights of homosexuals and to implement further legislation but often had difficulty getting approval for such measures in the Federal Council. His Government was nevertheless fully committed to the elimination of all types of discrimination and would continue to implement all relevant European Union legislation as well as domestic legislation to eliminate discrimination.

53. **Mr. Mengel** (Germany) said that, to correct a possible misunderstanding concerning the status of the victims of trafficking, he wished to point out that they were often allowed to remain as residents without, however, being granted a full residence permit, in order to protect them against deportation. Turning to the question of the Roma, he said that there was undeniably popular prejudice against the Roma but it was not true that the Roma were systematically deported to Serbia, Montenegro and Kosovo. In 2001, 2002 and 2003 respectively, 573, 3,015 and 2,892 persons had been returned to those areas, including some Roma, but there was no systematic discrimination against the Roma. In addition, up to 1,000 members of ethnic minorities, except for Roma or ethnic Serbs, could be deported to other entities of Yugoslavia.

54. He recognized that there were problems with the integration of third generation ethnic Turks, who faced higher than average unemployment rates and discrimination. Although the Government had attempted to implement rules to ensure protection of their rights, the mindset of the general population had to be changed. Better integration of lawfully resident aliens was one of the aims of the new Immigration Act. One attempt to improve their status had been the application of the right of jus soli to the children of foreigners born in Germany, on condition that the parents had been legal residents for eight years and had enjoyed permanent residence status for three years. When they reached the age of majority, the children had to choose between their parents' nationality and German nationality.

55. In response to concerns about the treatment of followers of Scientology, he said that it was true that Scientology was not recognized as a religion. He recalled that under article 8, paragraph 3, of the Covenant, it was possible to exclude the followers of Scientology from the civil service on the grounds that civil servants had an overriding duty to defend democracy and protect the Constitution, which might pose a problem for some followers of Scientology.

They were not categorically banned from the civil service but a decision would be taken on an individua' case basis as to whether or not their adherence to Scientology would be an obstacle to employment in the civil service.

56. **Mr. Rothen** (Germany) said the inclusion of Israel in the Group of Western European and other States was a complicated issue. Such decisions were taken by the members of the Group, including the European Union. Following Israel's admission to the core group in New York, it had immediately requested membership in the Western European human rights group based in Geneva, which attempted to coordinate substantive positions among the members of that group. Its request had been supported by his Government and by the United States, but to date there was no consensus on Israel's membership in the human rights group.

57. **The Chairman** thanked the delegation for the comprehensiveness of its report and written and oral responses and for its frank and open dialogue with the Committee. There had been clear progress since the State party's fourth periodic report, as evidenced by the establishment of an Office of a Commissioner for Human Rights and Humanitarian Aid at the Foreign Office and a National Human Rights Institute as well as efforts to fight xenophobia, anti-Semitism and racism and implement the Durban Declaration and Programme of Action. Progress had also been made in protecting privacy rights and the rights of children, women and foreigners.

58. He expressed concern, however, at continued reservations, both direct and indirect, to the provisions of the Covenant and looked forward to the lifting of those reservations in the near future. While recognizing the problems posed by a federal system of government, he called upon the Federal Government to provide leadership and encourage the Länder to ensure full implementation of those provisions.

59. He said that in the wake of the events of 11 September 2001, care must be taken to ensure that measures to fight terrorism did not single out certain groups for suspicion simply because they were different; care must be taken especially to prevent Islamophobia. Noting the presence of German troops in Afghanistan, he recalled that the provisions of the Covenant also applied to States parties' military forces abroad.

60. Although progress had been made towards the further advancement of women, he expressed surprise at the persistence of discrimination against women in the civil service. The elderly, especially in an ageing population, were especially vulnerable and steps must be taken to protect their dignity and ensure that all elderly persons throughout the country had the right to full and equal benefits. Finally, he pointed out that no State had the right to decide whether any set of beliefs constituted a true religion or not. The law should apply to all without distinction and no one should be deprived of the right to work in the civil service, if qualified, simply on the basis of religion.

61. He said that he looked forward to the presentation of the State party's next periodic report and to continued progress in the State party towards full protection of the civil and political rights guaranteed under the Covenant. The State party's continued dialogue with the Committee would further strengthen the protection of human rights and the elimination of inequality in its territory.

62. **Mr. Stoltenberg** (Germany) thanked the Committee for its substantive discussion of the human rights situation in Germany and for the experts' many suggestions; the Committee's comments and recommendations would be widely disseminated. He expressed regret that, even in Germany, there continued to be violations of human rights, especially on the part of the police and stressed his Government's determination to do everything in its power to eliminate such violations.

The meeting rose at 6 p.m.